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There can be no doubt that the court must be troubled at the prospect of having to confirm arbitration awards calling for specific performance in situations where, had the matter appeared directly before the court, it might have denied the petition on traditional discretionary grounds.³⁷ It would seem that the problem might be considerably relieved by amending Article 84 of the Civil Practice Act to provide that in any matter before an arbitrator where he may order specific performance, the execution of which would involve considerable supervision, the arbiter be a technically qualified person, fully capable of and responsible for the enforcement of his award; or, in the alternative, that he have full power to retain such qualified parties to settle disputes which might arise during the ordered performance. It goes without saying that the arbiter's award would always be subject to confirmation by the court. It appears probable that such amendment would relieve the courts from the possibility of long and onerous supervision, inject a certain degree of stability into construction litigation, encourage arbitration in this area, and lastly, remove what is considered in some quarters to be an assault on the traditional discretionary power of courts of equity.



CORPORATIONS — BUSINESS CORPORATION HELD PROPER BENEFICIARY OF REAL PROPERTY TRUST.—Defendant, a business corporation, proposed a liquidation plan calling for the exchange of the corporate realty for trust certificates to be issued to the stockholders by trustees, who were to hold title to the real property, collect its income, and distribute the net income to the holders of the trust certificates. Plaintiff, one of three corporate stockholders of defendant corporation, sought a judgment declaring that the trust agreement was invalid on the ground that business corporations cannot be beneficiaries of trusts of realty. The Supreme Court, Special Term, upholding the validity of the trust agreement, held that a business corporation may be the beneficiary of a real property trust. *Alcoma Corp. v. Ackerman*, 26 Misc. 2d 678, 207 N.Y.S.2d 137 (Sup. Ct. 1960).

Prior to the instant case, the law in New York appeared to be that a business corporation could not be the beneficiary of a real property trust.¹ Although a charitable corporation, by statute, can

³⁷ Matter of Publishers' Ass'n, 280 App. Div. 500, 114 N.Y.S.2d 401 (1st Dep't 1952).

¹ In the Matter of Norton's Estate, 7 Misc. 2d 342, 343, 155 N.Y.S.2d 838, 839 (Surr. Ct. 1956); In the Matter of DeForest's Estate, 147 Misc. 82, 86,

be the beneficiary of *any* trust,² a long line of cases exists denying business corporations the power to receive and hold, as beneficiaries, trusts of realty.³ The earliest of these was *Adams v. Perry*,⁴ in which the Court of Appeals held that a corporation had no capacity to be beneficiary of a trust.⁵ The *Adams* case was followed and cited in *In the Matter of Griffin's Will*⁶ for the same principle. Again, in *In the Matter of DeForest's Estate*,⁷ Surrogate Foley flatly stated that a business corporation could not be the beneficiary of a trust, and this prohibition was reiterated once more in *In the Matter of Norton's Estate*.⁸

The Court in the instant case, therefore, in establishing that a business corporation *could* be the beneficiary of a trust of real property, was faced with a rather formidable array of cases apparently to the contrary. In arriving at its conclusion, the Court analyzed and distinguished these apparently irreconcilable authorities, looking at each case in the light of the statutes controlling the area at the time.

The *Adams* case is readily distinguishable on the grounds that it involved an attempted trust of *personalty*.⁹ The trust there was also violative of the rule against perpetuities.¹⁰ Furthermore, as the present Court points out, at the time of the *Adams* case a corporation could not acquire and hold real property or choses in action.¹¹ In addition, the only statutes extant at the time dealt merely with a corporation's power to act as *trustee* and not beneficiary.¹² In deciding that a corporation had no capacity to be a beneficiary, the court was ultimately guided by the absence of any statutes giving this power to a corporation.¹³ In light of the significant changes in the relevant statutory background since the *Adams* case,¹⁴ including the power of a corporation to acquire and hold real property and choses in action, the *Adams* case could hardly be controlling today.

263 N.Y.Supp. 135, 140 (Surr. Ct. 1933); *In the Matter of Griffin's Will*, 167 N.Y. 71, 78, 60 N.E. 284, 286 (1901) (concurring opinion) (dictum); *Adams v. Perry*, 43 N.Y. 487, 498 (1871).

² N.Y. REAL PROP. LAW § 113(1); N.Y. PERS. PROP. LAW § 12(1) (Tilden Act).

³ See note 1 *supra*.

⁴ 43 N.Y. 487 (1871).

⁵ *Id.* at 498.

⁶ 167 N.Y. 71, 78, 60 N.E. 284, 286 (1901) (concurring opinion) (dictum).

⁷ 147 Misc. 82, 263 N.Y. Supp. 135 (Surr. Ct. 1933).

⁸ 7 Misc. 2d 342, 343, 155 N.Y.S.2d 838, 839 (Surr. Ct. 1956).

⁹ *Adams v. Perry*, 43 N.Y. 487, 497 (1871).

¹⁰ *Id.* at 498-500.

¹¹ *Alcoma Corp. v. Ackerman*, 26 Misc. 2d 678, 207 N.Y.S.2d 137, 141 (Sup. Ct. 1960).

¹² *Ibid.*

¹³ *Adams v. Perry*, 43 N.Y. 487, 498 (1871).

¹⁴ See text accompanying footnotes 17-22 *infra*.

The *Griffin* case was decided under the same statutory scheme as the *Adams* case.¹⁵ Furthermore, in both cases the respective trusts were invalid for other reasons.¹⁶ Also, in the *Griffin* case, the reference to *Adams* was by way of dictum in a concurring opinion.

In 1909, after the *Adams* and *Griffin* cases had been decided, the following statutes were enacted:

(a) Every corporation as such has power, though not specified in the law under which it is incorporated:

3. To acquire property for the corporate purposes by grant, gift, purchase, devise or bequest. . . .¹⁷

(b) The term property includes real and personal property.¹⁸

(c) The term personal property includes chattels, money, things in action. . . .¹⁹

(d) Any stock corporation . . . may purchase, acquire, hold and dispose of . . . choses in action. . . .²⁰

(d) The term person includes a corporation. . . .²¹

As can readily be seen, the first three statutes, when read together, enable a corporation to hold property as a beneficiary. The fourth has the same effect, since the interest of a beneficiary is a chose in action.²² It would seem, therefore, that these provisions of the Construction Law and the Corporation Law settle the issue definitively and provide a ready answer to the problem.

Nevertheless, the courts continued, in two subsequent cases, to adhere to the holdings of the earlier *Adams* and *Griffin* cases. In *In the Matter of DeForest's Estate*²³ the Court declared that a business corporation could not be the beneficiary of a trust of realty.²⁴ The statutory changes which had taken place some twenty-four years earlier were apparently ignored, although it is highly unlikely that the court was totally unaware of their existence. A more probable explanation might be that the court was unaware of the fact that the statutes did not exist at the time of the *Adams*

¹⁵ The statutory scheme was not changed until 1909.

¹⁶ *Alcoma Corp. v. Ackerman*, 26 Misc. 2d 678, 207 N.Y.S.2d 137, 141 (Sup. Ct. 1960).

¹⁷ N.Y. GEN. CORP. LAW § 14(3).

¹⁸ N.Y. GEN. CONSTR. LAW § 38.

¹⁹ N.Y. GEN. CONSTR. LAW § 39.

²⁰ N.Y. STOCK CORP. LAW § 18.

²¹ N.Y. GEN. CONSTR. LAW § 37.

²² The right of a beneficiary to enforce the trust is a chose in action. N.Y. REAL PROP. LAW § 100; *Schenck v. Barnes*, 156 N.Y. 316, 321, 50 N.E. 967, 968 (1898). Consequently, since a corporation can acquire personal property, including choses in action, a corporation can be beneficiary of a trust.

²³ 147 Misc. 82, 86, 263 N.Y. Supp. 135, 140 (Surr. Ct. 1933).

²⁴ *Ibid.*

and *Griffin* cases, since both cases were cited with approval as having a pertinent bearing on the outcome.

Again, in *In the Matter of Norton's Estate*,²⁵ Surrogate Frankenthaler stated that although a trust of personalty would be allowed, a trust of realty for a business corporation was prohibited.²⁶ The court here, however, limited the basis of its decision to a construction of the trust statute, Section 96(3) of the Real Property Law, and did not find it necessary to investigate the case law or other statutes, using section 96 as the sole determinant of the issue. It reasoned that, since only trusts of realty are limited by section 96, trusts of personalty are not limited, and therefore a trust of personalty may be created for any lawful purpose, but not a trust of realty.²⁷

This court further added that section 96 "seemingly requires that beneficiaries of land trusts be natural persons,"²⁸ and interpreted the word "person" in this statute as excluding corporations. In doing so, the court seemingly failed to give effect to the specific provision of Section 37 of the General Construction Law which includes a corporation in the term "person."

In light of the fact, however, that a more particular construction of a word in other statutes or cases will often supersede the more general definition of a word in the General Construction Law, and in light of the fact that a corporation has been considered to be *not* a person in several other areas,²⁹ and for other purposes, Surrogate Frankenthaler's position, although overruled by the instant case, was a tenable one. It is also highly likely in the *Norton* and *DeForest* cases that the courts were concerned primarily with violations of the rule against perpetuities and the rule against indefinite beneficiaries in a trust, and only secondarily with the precise problem under discussion.³⁰

The Supreme Court's construction, in the principal case, of the pertinent statutes mentioned above, however, seems more logical, more consistent with corporation law, and more consonant with modern business practices. As emphasized by Justice Streit, there is no valid reason today why a business corporation cannot be the

²⁵ 7 Misc. 2d 342, 343, 155 N.Y.S.2d 838, 839 (Surr. Ct. 1956).

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ Section 37 "is applicable to every statute unless its general object, or the context of the language construed, or other provisions of law indicate that a different meaning or application was intended. . . ." N.Y. GEN. CONSTR. LAW § 110.

³⁰ It must be remembered, however, that trusts of realty with business corporations as beneficiaries, are still subject to rules governing ordinary trusts of realty, including the rule against perpetuities and the prohibitions against indefinite beneficiaries.

beneficiary of a real property trust.³¹ As a matter of fact, the proposition would seem to flow rather naturally from the applicable statutes, and has had, in all probability, a practical, if not a legal existence for some time in this state.³² As well as being entirely consistent with modern business activity and corporation law trends, the decision in the instant case is in accord with most scholarly authorities.³³ Moreover, it would seem that ability to be a beneficiary may be implied from the power to hold and acquire property, and need not be specifically granted by the corporate charter.³⁴



CRIMINAL LAW — WAIVER OF JURY TRIAL — RIGHT TO WAIVE HELD QUALIFIED.—Defendant and codefendant were indicted on two counts of first degree manslaughter, second degree manslaughter, and conspiracy. The defendant was convicted on two counts of second degree manslaughter and conspiracy. He appealed from this conviction, claiming that the denial of his motion for a nonjury trial was a violation of his absolute right under the New York Constitution¹ to waive a jury trial. In an opinion subsequently

³¹ *Alcoma Corp. v. Ackerman*, 26 Misc. 2d 678, 682 207 N.Y.S.2d 137, 142 (Sup. Ct. 1960).

³² Indeed, this is the theory which is implicit throughout Justice Streit's discussion of the previous case law, as he indicates that the prior cases were primarily concerned with violations of the rule against perpetuities, misinterpretation of § 96(3), and indefiniteness of beneficiaries. *Id.* at 680-84, 207 N.Y.S.2d at 140-43.

³³ "[I]n the absence of statutes otherwise providing, a corporation can take and hold the title to land as well as to personal property, and can be the beneficiary of a trust either of land or of personalty." 2 SCOTT, TRUSTS 819 (2d ed. 1956). 1A BOGERT, TRUSTS AND TRUSTEES § 168, at 118 (1951). RESTATEMENT (SECOND), TRUSTS § 116, comment c (1959): "A corporation, municipal or private, may be the beneficiary of a trust of property if it has capacity to take and hold the legal title to such property."

³⁴ See *Lord v. Equitable Life Assur. Soc'y*, 47 Misc. 187, 194, 94 N.Y. Supp. 65, 70 (Sup. Ct.), *aff'd*, 109 App. Div. 252, 96 N.Y. Supp. 10 (2d Dep't 1905: "[A]ll applicable provisions of a general law under which a corporation has been formed, not expressly set forth in its certificate or articles of incorporation, are to be read into, and taken to be a part of its charter. . . ." *Ibid.* Consequently, since the New York corporation laws authorize a corporation to hold choses in action, it would seem superfluous to include such a power in the corporate charter. BALLANTINE, CORPORATIONS § 18, at 62 (rev. ed. 1946).

¹ N.Y. CONST. art. I, § 2. "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law. The legislature may provide, however,